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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CHARLES CARTE, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

SAMSUNG SDI CO., LTD.; SAMSUNG SDI  
AMERICA, INC.; LG CHEM, LTD.; LG  
CHEM AMERICA, INC.; PANASONIC  
CORPORATION; PANASONIC  
CORPORATION OF NORTH AMERICA;  
SANYO ELECTRIC CO., LTD.; SANYO  
NORTH AMERICA CORPORATION; SONY  
CORPORATION; SONY ENERGY  
DEVICES CORPORATION; SONY  
ELECTRONICS, INC.; HITACHI, LTD.;  
HITACHI MAXELL, LTD.; AND MAXELL  
CORPORATION OF AMERICA;

Defendants,

Case No.

12

5268

**CLASS ACTION**

**COMPLAINT**

**JURY TRIAL DEMANDED**

**EDL**

1 Plaintiff, Charles Carte, individually, and on behalf of a class of all those similarly situated,  
2 brings this action for treble damages under section one of the Sherman Act, 15 U.S.C. § 1, and  
3 section four of the Clayton Act, 15 U.S.C. § 15, against the defendants named herein. This  
4 complaint is based on information and belief, except those paragraphs which relate to plaintiff,  
5 which are based on personal knowledge. Plaintiff alleges as follows:

### 6 INTRODUCTION

7 1. This lawsuit arises out of a contact, combination and conspiracy among defendants  
8 and their co-conspirators to fix, raise, maintain and/or stabilize the prices of Lithium-ion  
9 Rechargeable Batteries sold directly by the defendants and their affiliates during the period from  
10 approximately January 1, 2002 through the present (the "Class Period").

11 2. The Lithium-ion Rechargeable Battery market is one of the fastest growing markets  
12 in the electronics industry. During the Class Period, Lithium-ion Rechargeable Batteries served as  
13 one of the main power sources for many electronic devices. Defendants' sales of Lithium-ion  
14 Rechargeable Batteries generated billions of dollars in annual revenues and expanded exponentially  
15 with the increased utilization of mobile phones and notebook computers throughout the United  
16 States.

17 3. The Department of Justice ("DOJ") launched an investigation into anticompetitive  
18 conduct with respect to Lithium-ion Rechargeable Batteries in mid-2011. Many of the Defendants  
19 named in this complaint have a long history of engaging in anticompetitive conduct, having  
20 consistently sought to fix prices for a wide variety of components for electronic products sold in the  
21 United States, such as Dynamic Random Access Memory ("DRAM"), Thin Film Transistor Liquid  
22 Crystal Display ("TFT-LCD") panels, Optical Disc Drives ("ODDs") and Cathode Ray Tubes  
23 ("CRTs"), among others. Like the previous criminal conspiracies, through the conduct described  
24 herein the Defendants entered into an illegal agreement, the object of which was to stabilize the  
25 prices for and allocate markets and/or customers with respect to Lithium-ion Rechargeable  
26 Batteries.

27 4. Defendants are the leading manufacturers of Lithium-ion Rechargeable Batteries.  
28 Defendants control the majority of the Lithium-ion Rechargeable Battery industry, a multibillion

1 dollar market, which in 2011 alone generated over \$14 billion dollars in gross revenue. Plaintiff  
2 alleges that during the Class Period, Defendants conspired, combined and contracted to fix, raise,  
3 maintain, and stabilize the prices at which Lithium-ion Rechargeable Batteries were sold in the  
4 United States. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the  
5 Class paid artificially inflated prices for Lithium-ion Rechargeable Batteries during the Class  
6 Period. Such prices exceeded the amount they would have paid if the price for Lithium-ion  
7 Rechargeable Batteries had been determined by a competitive market.

### 8 JURISDICTION AND VENUE

9 5. Plaintiff brings this action under §§ 4, 12 and 16 of the Clayton Act (15 U.S.C.  
10 §§ 15, 22 and 26) for treble damages and injunctive relief, as well as reasonable attorneys' fees and  
11 costs with respect to the injuries sustained by plaintiff arising from violations by Defendants of the  
12 federal antitrust laws, including § 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

13 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a)  
14 and 1367.

15 7. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28  
16 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is  
17 licensed to do business or is doing business in this judicial district.

### 18 PARTIES

19 8. Plaintiff Charles Carte is a resident of Nevada. During the Class Period, Plaintiff  
20 purchased Lithium-ion Rechargeable Batteries directly from one or more of the named Defendants.  
21 As a result of the conspiracy alleged herein, Plaintiff has been injured in its business or property in  
22 that the price he paid for the Lithium-ion Rechargeable Batteries was artificially raised, maintained  
23 or stabilized at a supra-competitive level by defendants and their co-conspirators.

24 9. Defendant Samsung SDI Co., Ltd. ("Samsung SDI") is a Korean corporation with its  
25 principal executive offices at 575 Shin-Dong, Youngtong-Gu, Suwon, Gyeonggi South Korea.  
26 Defendant Samsung SDI Co., Ltd. is 20% owned by the Korean conglomerate Samsung Electronics,  
27 Inc. Defendant Samsung SDI is the world's largest manufacturer of Lithium-ion Rechargeable  
28 Batteries. Defendant Samsung SDI, either directly or through a wholly owned subsidiary,

1 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
2 Lithium-ion Rechargeable Batteries throughout the United States, including in this district, during  
3 the Class Period.

4 10. Defendant Samsung SDI America, Inc. ("Samsung SDI America") is a California  
5 corporation with its principal executive offices at 85 W. Tasman Drive, San Jose, CA 95134-1703.  
6 Samsung SDI America is a wholly owned subsidiary of Defendant Samsung SDI. Defendant  
7 Samsung SDI America, either directly or through a wholly owned subsidiary, participated in the  
8 conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium-ion  
9 Rechargeable Batteries throughout the United States, including in this district, during the Class  
10 Period.

11 11. Defendants Samsung SDI and Samsung SDI America are referred to herein as the  
12 "Samsung."

13 12. Defendant LG Chem, Ltd. ("LG Chem") is a Korean corporation with its principal  
14 executive offices at 20 Yeouido-dong, Yeongdeungpo-gu, Seoul, South Korea. Defendant LG  
15 Chem is an affiliate of Seoul-based conglomerate LG Electronics. LG Chem is one of the world's  
16 leading manufacturers of Lithium-ion Rechargeable Batteries. Defendant LG Chem, either directly  
17 or through a wholly owned subsidiary, participated in the conspiracy alleged in this complaint and  
18 manufactured, marketed and/or sold Lithium-ion Rechargeable Batteries throughout the United  
19 States, including in this district, during the Class Period.

20 13. Defendant LG Chem America, Inc. ("LG Chem America") is a New Jersey  
21 corporation with its principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New  
22 Jersey, 07632. Defendant LG Chem America is a wholly owned subsidiary of Defendant LG Chem.  
23 Defendant LG Chem America, either directly or through a wholly owned subsidiary, participated in  
24 the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium-ion  
25 Rechargeable Batteries throughout the United States, including in this district, during the Class  
26 Period.

27 14. Defendants LG Chem and LG Chem America are referred to collectively herein as  
28 "LG Chem."

1           15. Defendant Panasonic Corporation is a Japanese corporation with its principal  
2 executive offices at 1006 Oaza Kadoma, Osaka 571-8501, Japan. Up until approximately October 1,  
3 2008, Panasonic Corporation was known as Matsushita Electric Industrial Co., Ltd. Defendant  
4 Panasonic manufactures and sells Lithium-ion Rechargeable Batteries under the Panasonic name  
5 and also under the name of Defendant and wholly owned subsidiary Sanyo Electric Co., Ltd. With  
6 respect to those batteries sold under the Panasonic name, they are produced by Panasonic's internal  
7 division called "Energy Company." Defendant Panasonic Corporation is one of the world's leading  
8 manufacturers of Lithium-ion Rechargeable Batteries. Defendant Panasonic Corporation, either  
9 directly or through a wholly owned subsidiary, participated in the conspiracy alleged in this  
10 complaint and manufactured, marketed and/or sold Lithium-ion Rechargeable Batteries throughout  
11 the United States, including in this district, during the Class Period.

12           16. Defendant Panasonic Corporation of North America, formerly known as Matsushita  
13 Electric Corporation of America, is a Delaware Corporation with its principal executive offices at 1  
14 Panasonic Way, Secaucus, New Jersey. Panasonic Corporation of North America is a wholly owned  
15 and controlled subsidiary of Defendant Panasonic Corporation. Defendant Panasonic Corporation of  
16 North America, either directly or through a wholly owned subsidiary, participated in the conspiracy  
17 alleged in this complaint and manufactured, marketed and/or sold Lithium-ion Rechargeable  
18 Batteries throughout the United States, including in this district, during the Class Period.

19           17. Defendant Sanyo Electric Co., Ltd. ("Sanyo") is a Japanese corporation with its  
20 principal executive offices at 5-5 Keihan-Hondori, 2-chome, Moriguchi, Osaka 570-8677, Japan.  
21 Defendant Sanyo is one of the largest manufacturers and suppliers of Lithium-ion Rechargeable  
22 Batteries in the world. As of December 9, 2009, Defendant Sanyo became a wholly owned  
23 subsidiary of Defendant Panasonic Corporation. Defendant Sanyo, either directly or through a  
24 wholly owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured,  
25 marketed and/or sold Lithium-ion Rechargeable Batteries throughout the United States, including in  
26 this district, during the Class Period.

27           18. Defendant Sanyo North America Corporation is a Delaware corporation with its  
28 principal executive offices at 2055 Sanyo Avenue, San Diego, California 92154. Defendant Sanyo



1 North America Corporation is a wholly owned subsidiary of Defendant Sanyo Electric Co., Ltd.  
2 Defendant Sanyo North America Corporation, either directly or through a wholly owned subsidiary,  
3 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
4 Lithium-ion Rechargeable Batteries throughout the United States, including in this district, during  
5 the Class Period.

6 19. Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electric,  
7 Co., Ltd., and Sanyo North America Corporation are referred to collectively herein as "Panasonic."

8 20. Defendant Sony Corporation is a Japanese corporation with its principal executive  
9 offices at 7-1 Konan I-Chome, Minato-Ku, Tokyo, Japan. Defendant Sony Corporation is one of  
10 the world's leading suppliers of Lithium-ion Rechargeable Batteries. Defendant Sony Corporation,  
11 either directly or through a wholly owned subsidiary, participated in the conspiracy alleged in this  
12 complaint and manufactured, marketed and/or sold Lithium-ion Rechargeable Batteries throughout  
13 the United States, including in this district, during the Class Period.

14 21. Defendant Sony Energy Devices Corporation is a Japanese corporation with its  
15 principal executive offices at 1-1 Shimosugishita, Takakura, Hiwada-machi, Koriyama-shi,  
16 Fukushima, Japan. Defendant Sony Energy Devices Corporation is a wholly owned subsidiary of  
17 defendant Sony Corporation. Sony Corporation manufactures its Lithium-ion Rechargeable  
18 Batteries through its Sony Energy Devices Corporation subsidiary. Sony Energy Devices  
19 Corporation manufactures its Lithium-ion Rechargeable Batteries at plants located in Japan,  
20 Singapore, and China. Defendant Sony Energy Devices Corporation, either directly or through a  
21 wholly owned subsidiary, participated in the conspiracy alleged in this complaint and manufactured,  
22 marketed and/or sold Lithium-ion Rechargeable Batteries throughout the United States, including in  
23 this district, during the Class Period.

24 22. Defendant Sony Electronics, Inc. is a Delaware corporation with its principal  
25 executive offices at 16530 Via Esprillo, San Diego, CA 92127. Defendant Sony Electronics, Inc. is  
26 a wholly owned subsidiary of defendant Sony Corporation. Defendant Sony Electronics, Inc., either  
27 directly or through a wholly owned subsidiary, participated in the conspiracy alleged in this  
28

1 complaint and manufactured, marketed and/or sold Lithium-ion Rechargeable Batteries throughout  
2 the United States, including in this district, during the Class Period.

3 23. Defendants Sony Corporation, Sony Energy Devices Corporation, and Sony  
4 Electronics, Inc. are referred to herein as "Sony."

5 24. Defendant Hitachi, Ltd. is a Japanese company with its principal executive office at  
6 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo, 100-8280, Japan. Defendant Hitachi, Ltd.  
7 manufactures and sells Lithium-ion Rechargeable Batteries through its Components and Devices  
8 Business Unit. Defendant Hitachi, Ltd., either directly, or through a wholly owned subsidiary,  
9 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
10 Lithium-ion Rechargeable Batteries throughout the United States, including in this district, during  
11 the Class Period.

12 25. Defendant Hitachi Maxell, Ltd. ("Hitachi-Maxell") is a Japanese corporation with its  
13 principal executive office at 2-18-2 Iidabashi, Chiyoda-ku, Tokyo, 102-8521 Japan. Defendant  
14 Hitachi-Maxell is a wholly owned subsidiary of Defendant Hitachi, Ltd. Hitachi-Maxell was  
15 founded in 1960 and manufactures and sells batteries through its batteries business unit. Defendant  
16 Hitachi-Maxell, either directly, or through a wholly owned subsidiary, participated in the conspiracy  
17 alleged in this complaint and manufactured, marketed and/or sold Lithium-ion Rechargeable  
18 Batteries throughout the United States, including in this district, during the Class Period.

19 26. Defendant Maxell Corporation of America ("Maxell") is a New Jersey corporation  
20 with its principal executive offices at 3 Garrett Mountain Plaza, 3<sup>rd</sup> Floor, Suite 300, Woodland Park,  
21 New Jersey, 07424. Defendant Maxell, either directly, or through a wholly owned subsidiary,  
22 participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold  
23 Lithium-ion Rechargeable Batteries that were distributed throughout the United States, including in  
24 this district, during the Class Period.

25 27. Defendants Hitachi, Ltd., Hitachi-Maxell, Ltd., and Maxell Corporation of America  
26 are referred to herein as "Hitachi."

**CLASS ACTION ALLEGATIONS**

28. Plaintiff brings this action both on behalf of himself, and as a class action pursuant to Federal Rules of Civil Procedure, Rule 23(a) and (b)(3), on behalf of the following class (the "Class"):

All individuals and entities who, during the period from January 1, 2002 through the present (the "Class Period"), purchased Lithium-ion Rechargeable Batteries in the United States directly from one or more of the Defendants, their subsidiaries, or their affiliates. Excluded from the Class are Defendants and their parents, subsidiaries, affiliates, and all governmental entities.

29. Plaintiff does not know the exact number of class members because such information is in the exclusive control of Defendants. Plaintiff believes that, due to the nature of the trade and commerce involved, there are most likely thousands of class members, geographically dispersed throughout the United States such that joinder of all class members is impracticable.

30. Plaintiff's claim is typical of the claims of the class in that plaintiff is a direct purchaser of Lithium-ion Rechargeable Batteries, all Class members were damaged by the same wrongful conduct of defendants and their co-conspirators as alleged herein, and the relief sought is common to the class.

31. Numerous questions of law or fact arise from defendants' anticompetitive conduct that is common to the class. Among the questions of law or fact common to the class are:

- a. whether defendants engaged in a contract, combination or conspiracy among themselves to fix, maintain or stabilize the prices of, or allocate the market for, Lithium-ion Rechargeable Batteries sold in the United States;
- b. whether the conduct of Defendants caused prices of Lithium-ion Rechargeable Batteries to be artificially inflated to non-competitive levels; and;
- c. whether plaintiff and other members of the class were injured by the conduct of Defendants and, if so, the appropriate class-wide measure of damages and appropriate injunctive relief.



32. These common questions of law or fact are common to the class, and predominate over any other questions affecting only individual class members.

33. Plaintiff will fairly and adequately represent the interests of the class in that plaintiff is a typical direct purchaser of Lithium-ion Rechargeable Batteries and has no conflicts with any other member of the class. Furthermore, plaintiff has retained competent counsel experienced in antitrust and class action litigation.

34. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy.

35. Prosecution of separate actions by individual class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the Defendants.

36. Injunctive relief is appropriate as to the class as a whole because Defendants have acted or refused to act on grounds generally applicable to the class.

37. Plaintiff reserves the right to expand, modify or alter the class definition in response to information learned during discovery.

#### **INTERSTATE AND FOREIGN TRADE AND COMMERCE**

38. During the Class Period, Defendants and their Co-conspirators, or one or more of their subsidiaries and/or affiliates sold and shipped substantial quantities of Lithium-ion Rechargeable Batteries in a continuous and uninterrupted flow of interstate and international commerce to customers located in states other than the states in which defendants are located.

39. The business activities of Defendants that are the subject of this Complaint were within the flow of, and substantially affected, interstate trade and commerce. Furthermore, each of the defendants and their co-conspirators used instrumentalities of interstate commerce to market and sell Lithium-ion Rechargeable Batteries.

40. During the Class Period, Defendants, amongst whom are the largest Lithium-ion Rechargeable Batteries producers in the world, have most of the Lithium-ion Rechargeable Batteries sales in the global market.

41. During the Class Period, Defendants and their Co-conspirators collectively imported at least tens of millions of Lithium-ion Rechargeable Batteries into the United States.

42. Defendants and their Co-conspirators sell their Lithium-ion Rechargeable Batteries through various direct channels, including to manufacturers of electronic products and devices, to resellers of Lithium-ion Rechargeable Batteries and through the retail internet sites. Defendants operated (and some continue to operate) retail websites through which United States purchasers could purchase directly Lithium-ion Rechargeable Batteries. These include:

(a) Samsung.com (<http://www.samsung.com/us/#latest-home>);

(b) Sony Store (<http://store.sony.com/webapp/wcs/stores/servlet/StoreCatalogDisplay?langId=-1&storeId=10151&catalogId=10551>); and

(c) Panasonic USA (<http://shop.panasonic.com/>).

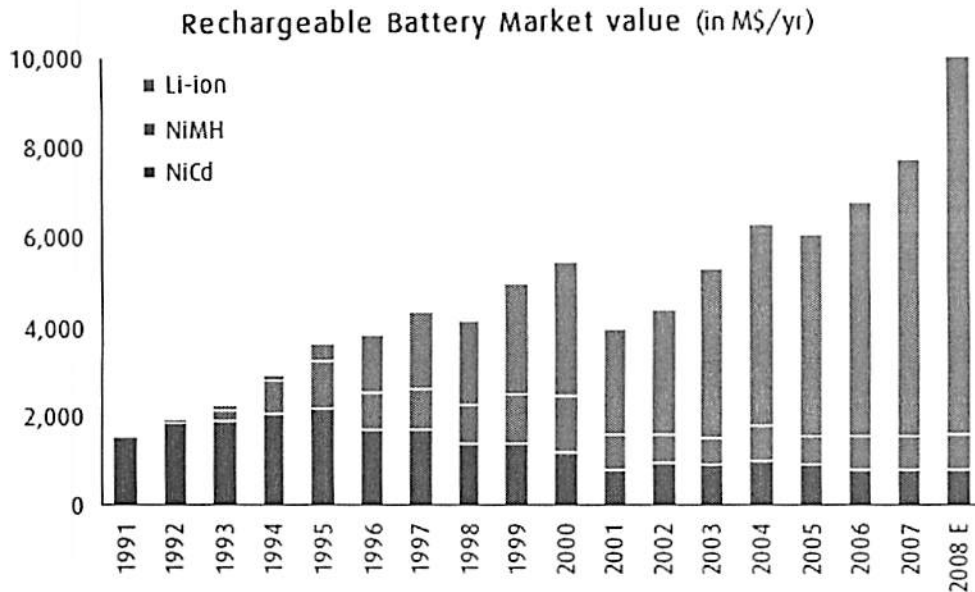
43. Sony also operates brick and mortar sales outlets in the United States where its Lithium-ion Rechargeable Batteries can be purchased directly, such as the Sony Store at the Stanford Shopping Center in Palo Alto, California.

#### **THE LITHIUM-ION RECHARGEABLE BATTERY INDUSTRY**

44. Throughout the Class Period, defendants and their co-conspirators engaged in the business of marketing and selling Lithium-ion Rechargeable Batteries throughout the United States and the world.

45. The rechargeable battery market is generally comprised of four types of secondary batteries: (1) Lithium-ion ("Li-ion"); (2) lead-acid; (3) nickel cadmium ("NiCad"); and (4) nickel-metal hydride ("NiMH"). Li-Ion batteries are by far the most popular type of rechargeable battery.

46. Both Li-Ion batteries and NiMH batteries were introduced in or around 1990. Since that time, however, Lithium-ion Rechargeable Batteries have quickly become the most popular type of secondary battery, easily outpacing NiMH and NiCad batteries. The following graph (based on data from the Institute of Information Technology, Ltd.) shows the growth of Li-Ion Batteries versus NiMH and NiCad batteries:



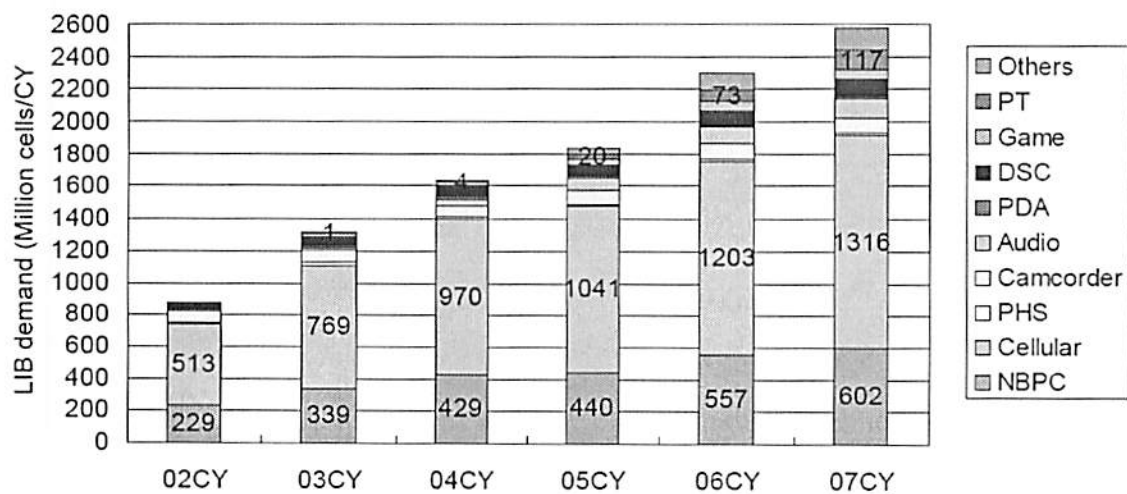
Source : IIT + internal data (2008)

47. Lithium-ion Rechargeable Batteries are generally divided into four types: (1) small cylindrical (solid body without terminals); (2) large cylindrical (solid body with large threaded terminals); (3) pouch (soft, flat body such as those used in cell phones); and (4) prismatic (square/rectangular, semi-hard plastic case with large threaded terminals). Each Defendant manufactures and markets each of these types of Lithium-ion Rechargeable Batteries. Lithium ion cylindrical or prismatic batteries are used primarily in notebooks, camcorders, mobile phones, and other electronic devices.

48. In addition to the four types of Lithium-ion Rechargeable Batteries described above, there are also lithium ion polymer batteries. Lithium ion polymer batteries enjoy more freedom in shape which enables the battery to be tailored to fit the device. The exterior of the lithium ion polymer battery is generally made of a laminate film which allows it to be more flexible in terms of its shape.

49. Lithium-ion Rechargeable Batteries, as defined herein, includes cylindrical, prismatic, pouch and polymer Li-Ion Batteries.

50. Lithium-ion Rechargeable Batteries, by virtue of their superior performance characteristics, are superior to all other types of rechargeable batteries. Lithium-ion Rechargeable batteries are relatively small, light weight, possess a high energy density, and are immune from the "memory effect" (*i.e.* they do not need to be fully charged before using or discharged completely before re-charging). Accordingly, Lithium-ion Rechargeable Batteries have become the standard battery used in consumer electronic products. It is estimated that about 50% of all Lithium-ion Rechargeable Batteries used today are used in mobile phones and notebook computers. The rest are used in digital cameras, power tools, and other consumer electronic devices. The following graph (which incorporates information from the Institute of Information Technology, Ltd.) depicts the various applications that Lithium-ion Rechargeable Batteries are used in:



51. Lithium-ion Rechargeable Batteries are also fungible, highly standardized products which are interchangeable among the same type and across manufacturers. International standard-setting organizations, such as the International Electrotechnical Commission ("IEC") or the Institute of Electrical and Electronics Engineers ("IEEE") develop standards to be followed by the manufacturers of Lithium-ion Rechargeable Batteries so that products which use Lithium-ion Rechargeable Batteries can be developed to accommodate a specific Lithium-ion Rechargeable Battery.

52. Lithium-ion Rechargeable Batteries were first commercialized by Defendant Sony in or around 1991. Thereafter, between 1991 and late 1999, the market for Lithium-ion Rechargeable



1 Batteries was primarily controlled by Japanese manufacturers Sony and Panasonic. Prices for  
2 Lithium-ion Rechargeable Batteries during this time period remained stable.

3 53. In or around 1999, Defendants Sony and Panasonic faced their first competitive  
4 threat from outside Japan as lower cost manufacturers from Korea entered the market. Beginning in  
5 or around 1997, the Korean government promoted research and development focused on battery  
6 manufacturers in an effort to create the secondary battery industry. As a result, Korea established  
7 the second automated mass battery production system in the world. The Korean Battery R&D  
8 Association took the lead in the "small-size secondary battery development project" together with  
9 11 manufacturers, 10 universities and research centers, investing 54.87 billion won over 5 years  
10 from 1997 to 2002.

11 54. In 1999, Defendant LG Chem became the first Korean manufacturer of Lithium-ion  
12 Rechargeable Batteries followed closely by Defendant Samsung SDI. The introduction of  
13 competition from the Korean Defendants -LG Chem and Samsung SDI, caused worldwide prices  
14 for Lithium-ion Rechargeable Batteries to decline sharply. In fact, during the two year period from  
15 2000-2002, the prices for Lithium-ion Rechargeable Batteries fell by nearly 50%. Prices fell  
16 despite strong increase in demand for Lithium-ion Rechargeable Batteries used in devices such as  
17 mobile telephones and notebook computers.

18 55. The entry of Defendants Samsung SDI and LG Chem changed the marketplace for  
19 Lithium-ion Rechargeable Batteries. Through aggressive price competition, Defendants Samsung  
20 SDI and LG Chem secured approximately 20% of the worldwide market for Lithium-ion  
21 Rechargeable Batteries by 2003.

22 56. Japanese Defendants Sony, Panasonic, and Hitachi, sought to stem the rapid decline  
23 in Lithium Ion Rechargeable Battery prices and their rapid loss of market share from the intense  
24 competition from Korean Defendants Samsung SDI and LG Chem. In or around the end of 2001,  
25 the Defendants entered into an illegal conspiracy to stabilize and raise prices for Lithium-ion  
26 Rechargeable Batteries. Beginning in early 2002, Lithium-ion Rechargeable Batteries prices  
27 immediately stabilized after nearly a two-year period of rapid price decreases. From January 2002 -  
28



July 2008, despite the increase of the Korean Defendants' supply in the marketplace, the prices of Lithium-ion Rechargeable Batteries prices increased for most of the 2002-2008 period.

57. On or about 2008, the consumer market for electronic devices suffered a decrease in demand from the impact of the world financial crisis. From approximately January 2008 to the end of January 2009, the prices for Lithium-ion Rechargeable Batteries declined by approximately 40%.

58. In order to stem the rapid price decline in 2008, Defendants agreed to cut production of Lithium-ion Rechargeable Batteries by almost 66%. By coordinating this reduction in supply of Lithium-ion Rechargeable Batteries, Defendants were able to stabilize prices for Lithium-ion Rechargeable Batteries by the end of 2009.

59. Lithium-ion Rechargeable Battery prices remained stable from 2009 until 2011 when Defendants received notice they were being investigated by the U.S. Department of Justice and the European Union for price fixing. Since the investigation by the U.S. and European authorities, the prices for Lithium-ion Rechargeable Batteries have fallen approximately 10%.

60. Below is a chart compiled from data located at the Bank of Korea showing the domestic producer price for Lithium Ion Rechargeable Batteries for 2001 through 2011.



61. There are substantial barriers to entry into the market for Lithium-ion Rechargeable Batteries. A new entrant into the business would face costly and lengthy start-up costs, including multi-million dollar costs associated with research and development, manufacturing plants and

1 equipment, energy, transportation distribution infrastructure, skilled labor and long-standing  
2 customer relationships.

3 62. In addition to the large infrastructure costs, any new entrant will be required to  
4 comply with various environmental regulations in whatever jurisdiction such plant is built.  
5 Compliance with such regulations will require extensive testing and the receipt of government  
6 approvals, all of which will take many years.

7 63. Demand for Lithium-ion Rechargeable Batteries is inelastic because there are no  
8 close substitutes for these products due to their performance characteristics.

9 64. In or around May 2011, defendant Sony Corporation disclosed that its wholly owned  
10 U.S. subsidiary, Sony Electronics, Inc., received a subpoena from the Antitrust Division of the U.S.  
11 Department of Justice concerning its "secondary batteries" business. Specifically, Sony disclosed  
12 that:

13 In May 2011, Sony Corporation's U.S. subsidiary, Sony Electronics, Inc., received a  
14 subpoena from the U.S. Department of Justice ("DOJ") Antitrust Division seeking  
15 information about its secondary battery business. Sony understands that the DOJ and  
16 agencies outside the United States are investigating competition in the secondary batteries  
17 market. Based on the stage of the proceedings, it is not possible to estimate the amount of  
18 loss or range of possible loss, if any, that might result from adverse judgments, settlements  
19 or other resolutions of this matter.

20 Sony Corporation Form 20-F, fiscal year ending March 31, 2012.

21 65. Around the same time, according to a Korean news article, a source from the U.S.  
22 Department of Justice confirmed that it was conducting a criminal investigation into potential price  
23 fixing with respect to the sale of secondary batteries in the United States and has been since the first  
24 half of 2011. The same article quoted the source as stating that the investigation is in its final stages  
25 and that criminal charges are likely to be filed.

26 66. On or about August 20, 2012, LG Chem confirmed that it also was the target of the  
27 investigation being conducted by the U.S. Department of Justice.

28 67. Other news articles have confined that in addition to defendants Sony and LG Chem,  
Samsung SDI and Panasonic are also under investigation by the DOJ for price fixing with respect to  
the sale of rechargeable batteries. It is significant that Defendants' anticompetitive behavior is the  
subject of a criminal grand jury investigation being conducted by the Department of Justice. In

1 order for the DOJ to institute a grand jury investigation, a DOJ Antitrust Division attorney must  
 2 believe that a crime has been committed and prepare a detailed memorandum to that effect.<sup>1</sup>  
 3 Following a review of that memorandum, the request for grand a jury must be approved by the  
 4 Assistant Attorney General for the Antitrust Division, based on the standard that a criminal  
 5 violation may have occurred. In addition, the fact that the DOJ Antitrust Division investigation is  
 6 criminal, as opposed to civil, is significant. The Antitrust Division's "Standards for Determining  
 7 Whether to Proceed by Civil or Criminal Investigation" state: "[i]n general, current Division policy  
 8 is to proceed by criminal investigation and prosecution in cases involving horizontal, *per se*  
 9 unlawful agreements such as price fixing, bid rigging and horizontal customer and territorial  
 10 allocations."<sup>2</sup> Accordingly, the existence of a criminal investigation into the market for Lithium-ion  
 11 Rechargeable Batteries supports the existence of the conspiracy alleged in this complaint.

12 68. Many of the Defendants and Co-conspirators named herein have a long history of  
 13 collusion, and have been involved in antitrust investigations into other technology-related products,  
 14 or have admitted to participating in anticompetitive cartels involving technology-related or other  
 15 products. To the extent these prior instances of conspiratorial conduct involved consumer  
 16 electronics products, the products in question were marketed through the same or related channels  
 17 used for the marketing of Lithium-ion Rechargeable Batteries and were overseen by the same  
 18 employees, divisions or departments within the relevant Defendant for at least a portion of the Class  
 19 Period.

20 69. Televisions: In February of 1993, the Japan Fair Trade Commission ("JFTC")  
 21 entered a cease and desist order against the sales subsidiaries of Sony, Hitachi and what is now  
 22 Panasonic, finding that the subsidiaries requested large discount stores in the Akihabara district in  
 23

24  
 25 <sup>1</sup>See Antitrust Grand Jury Practice Manual, Vol. I, Ch. LB.1 (1991) ("[i]f a Division attorney  
 26 believes that a criminal violation of the antitrust laws has occurred, he should prepare a  
 memorandum requesting authority to conduct a grand jury investigation.") (available at  
<http://www.justice.gov/atr/public/guidelines/206542.htm>).

27 <sup>2</sup>See Antitrust Division Manual, Chapter III.C.5, 111-20 (2009), (available at  
 28 <http://www.justice.gov/atr/public/divisionmanual/chapter3.pdf>).

1 Tokyo and the Nipponbashi shopping district in Osaka not to display discount rates larger than 10  
2 percent of the maker's recommended retail prices for products including televisions on price tags at  
3 stores and in their handbills. The JFTC noted that similar practices had occurred in 1988 when it  
4 instructed two major industry associations, including the Japan Electronics Industry Association, to  
5 stop them, but the practices had continued.

6 70. Magnetic Videotapes: In November of 2007, the European Commission ("EC")  
7 fined Sony and various related entities and the Hitachi Maxell Limited joint venture \$110 million  
8 for fixing the prices of professional videotapes sold in Europe between 1999 and 2002.

9 71. DRAM: In October of 2005, Samsung admitted guilt and paid a \$300 million fine  
10 following an investigation by the DOJ into price-fixing among manufacturers of DRAM. In  
11 addition, on May 19, 2010, the EC announced that it was fining ten companies a total of €331  
12 million for participating in an international cartel to fix DRAM prices. Among those fined were  
13 Samsung, and Hitachi.

14 72. Cathode Ray Tubes: In a cease and desist order dated October 7, 2009, the JFTC  
15 levied \$37.4 million in fines against five companies for alleged participation in a price-fixing cartel  
16 for CRTs, including Panasonic, LG Philips Displays Korea Co. and Samsung SDI and their  
17 affiliates.

18 73. On November 26, 2009, the EC confirmed that it had sent a Statement of  
19 Objections to participants in the CRTs cartel in Europe. It has been reported that "[t]he EC  
20 believes that Chunghwa Picture Tubes (a unit of Tatung), LG Electronics, Matsushita (Panasonic),  
21 Philips, Samsung and Toshiba have formed cartels to boost pricing of CRT-based devices, such as  
22 computer monitors or TV-sets."

23 74. In November of 2007, Hitachi Canada Ltd., a subsidiary of Hitachi, received  
24 requests for information from the Canadian Competition Bureau with respect to alleged antitrust  
25 violations relating to CRTs.

26 75. TFT-LCD: The DOJ, the EC, and the JFTC have also investigated Samsung, LG and  
27 Hitachi, among others, concerning collusion among manufacturers of TFT-LCDs.  
28

1           76.     In December of 2008, the JFTC fined Sharp and Hitachi with respect to a conspiracy  
2 involving TFT-LCDs sold for use in Nintendo game consoles.

3           77.     Also in December of 2008, the DOJ announced that LG Display, a wholly owned  
4 Korean subsidiary of LG Electronics, pleaded guilty to an information alleging antitrust price-fixing  
5 allegations with respect to TFT-LCDs and had agreed to pay a \$400 million fine.

6           78.     On March 10, 2009, the DOJ announced that Hitachi Displays, Ltd. had pled guilty  
7 to participation in the price-fixing conspiracy involving TFT-LCDs and had agreed to pay a \$31  
8 million fine.

9           79.     Although it has not been publicly acknowledged by Samsung, it is widely believed  
10 that Samsung Electronics Corporation (SEC) is in the DOJ's leniency program with respect to the  
11 investigation into the market for TFT-LCDs, meaning that it has admitted its participation in the  
12 cartel.

13          80.     In July of 2009, the EC confirmed that it had sent a Statement of Objections to  
14 participants in the TFT-LCD cartel in Europe.

15          81.     Optical Disk Drives: In September 2011, Hitachi-LG Data Storage, Inc. pled guilty  
16 and paid a \$21.1 million fine for participating in various conspiracies to rig bids and fix prices for  
17 ODDs during the period from June 2004 through September 2009. In addition, three Hitachi-LG  
18 Data Storage executives also agreed to plead guilty for participating in the same conspiracy. In  
19 December 2011, Yong Kuen Park, Sang Hun Kim, and SikHur agreed to plead guilty for  
20 participating in the conspiracy with respect to ODDs during the period November 2005 through  
21 September 2009. All three agreed to serve prison time in the United States and pay criminal fines.

22          82.     As in the TFT-LCD industry, many of the Defendants here are not just the major  
23 manufacturers and sellers of the Lithium-ion Rechargeable Batteries, but are also vertically-  
24 integrated major manufacturers of products containing Lithium-ion Rechargeable Batteries. For  
25 example, the LG and Samsung entities manufactured and sold both TFT-LCD panels as well as  
26 TFT-LCD flat panel televisions. Here LG, Samsung, and Sony manufacture and sell both Lithium-  
27 ion Rechargeable Batteries and products containing Lithium-ion Rechargeable Batteries.  
28



1           83.     The Lithium-ion Rechargeable Battery industry has a similar oligopoly structure to  
2 that of the TFT-LCD, DRAM and CRT industries. The Defendants' entry into price fixing  
3 agreements in those markets (which include many of the same foreign companies) supports the  
4 DOJ's investigation and other evidence showing the existence of an anticompetitive conduct in the  
5 Lithium-ion Rechargeable Batteries market.

6           84.     The established illegal conduct of Hitachi, LG, Panasonic, Sony and Samsung in a  
7 wide variety of product markets across the world, including the United States, is illustrative of  
8 Defendants' respective corporate cultures which encourage illegal activities aimed at furthering the  
9 company's bottom line at the expense of consumers.

10          85.     For example, in November of 2007, Kim Yong Chul, the former chief lawyer for  
11 Samsung, admitted that the company "instructed me to commit crimes." Mr. Chul continued by  
12 saying that "[a] basic responsibility for all Samsung executives is to do illegal lobbying, buying  
13 people with money." Mr. Chul also acknowledged that he fabricated court evidence on behalf of  
14 the company and its executives. Further, several Samsung executives have recently been convicted  
15 of bribery and other white collar crimes.

16          86.     The facts as alleged herein show that the conduct of Defendants was directed both  
17 at customers in the United States and at United States import commerce for Lithium-ion  
18 Rechargeable Batteries. The conduct alleged herein was directed specifically at customers  
19 throughout the United States.

#### 20                                   **VIOLATIONS ALLEGED**

21          87.     Beginning at least as early as January 1, 2002, the exact date being unknown to  
22 plaintiff, defendants, by and through their officers, directors, employees, agents, or other  
23 representatives, entered in a continuing contract, combination or conspiracy to unreasonably restrain  
24 trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

25          88.     Defendants, by their unlawful conspiracy, artificially raised, inflated and maintained  
26 the market price of Lithium-ion Rechargeable Batteries as herein alleged.

27          89.     The contract, combination or conspiracy consisted of a continuing agreement,  
28 understanding and concert of action among defendants and their co-conspirators, the substantial

1 terms of which were to fix, raise, maintain and stabilize the prices of, and/or allocate the market  
2 for, Lithium-ion Rechargeable Batteries they sold in the United States.

3 90. For the purpose of formulating and effectuating their contract, combination or  
4 conspiracy, defendants and their co-conspirators did those things they contracted, combined or  
5 conspired to do, including:

- 6 a. participating in meetings and conversations to discuss the prices of and/or  
7 allocate the market for Lithium-ion Rechargeable Batteries;
- 8 b. agreeing to manipulate prices and supply so as to boost sagging Lithium-  
9 ion Rechargeable Batteries sales in a manner that deprived direct  
10 purchasers of free and open competition;
- 11 c. issuing price announcements and price quotations in accordance with the  
12 agreements reached; and
- 13 d. selling Lithium-ion Rechargeable Batteries to customers in the United States  
14 at non-competitive prices.

15 91. As a direct result of the unlawful conduct of Defendants and their co-conspirators in  
16 furtherance of their continuing contract, combination or conspiracy, plaintiff and other members of  
17 the class have been injured in their business and property in that they have paid more for Lithium-  
18 ion Rechargeable Batteries than they would have paid in the absence of defendants' price fixing.

### 19 EFFECTS

20 1. The above combination and conspiracy has had the following effects, among  
21 others:

- 22 a. price competition in the sale of Lithium-ion Rechargeable Batteries by  
23 defendants and their co-conspirators has been restrained, suppressed and  
24 eliminated throughout the United States;
- 25 b. prices for Lithium-ion Rechargeable Batteries sold by Defendants have  
26 been raised, fixed, maintained and stabilized at artificially high and  
27 noncompetitive levels throughout the United States; and  
28

c. direct purchasers of Lithium-ion Rechargeable Batteries from Defendants have been deprived of the benefit of free and open competition in the purchase of Lithium-ion Rechargeable Batteries.

92. As a direct and proximate result of the unlawful conduct of defendants, plaintiff and other members of the class have been injured in their business and property in that they paid more for Lithium-ion Rechargeable Batteries than they otherwise would have paid in the absence of the unlawful conduct of Defendants.

#### **FRAUDULENT CONCEALMENT**

93. Plaintiff and members of the Class did not discover and could not discover through the exercise of reasonable diligence the existence of the conspiracy alleged herein until mid-2011, when it was first publicly reported that manufacturers of Lithium-ion Rechargeable Batteries were under investigation by antitrust authorities in the United States, and elsewhere in the world, for anticompetitive conduct.

94. Defendants engaged in numerous acts and representations that were intended to and did conceal the collusion that they were engaging in concerning Lithium-ion Rechargeable Batteries pricing. Because Defendants' and their Co-conspirators' agreements, understandings, and conspiracies were kept secret, Plaintiff and members of the Class were unaware of Defendants' and their Co-conspirators' unlawful conduct alleged herein, and they did not know before that time that they were paying artificially high prices for Lithium-ion Rechargeable Batteries throughout the United States during the Class Period.

95. By their very nature, Defendants' and their Co-conspirators' price-fixing conspiracy was inherently self-concealing. The Lithium-ion Rechargeable Batteries industry is not exempt from antitrust regulation, and thus, before mid-2011, Plaintiff reasonably considered it to be a well-regulated competitive industry.

96. In the context of the circumstances surrounding Defendants' and their Co-conspirators' pricing practices, Defendants' acts of concealment were more than sufficient to preclude suspicion by a reasonable person that Defendants' and their Co-conspirators' pricing was conspiratorial. Accordingly, a reasonable person under the circumstances would not have been

1 alerted to investigate the legitimacy of Defendants' and their Co-conspirators' Lithium-ion  
2 Rechargeable Batteries prices before mid-2011.

3 97. Plaintiff and members of the Class could not have discovered the alleged contract,  
4 conspiracy, or combination at an earlier date by the exercise of reasonable diligence because of the  
5 deceptive practices and techniques of secrecy employed by the Defendants and their Co-  
6 conspirators to avoid detection of, and fraudulently conceal, their contract, combination or  
7 conspiracy.

8 98. As a result of the Discovery Rule and Defendants' and their Co-conspirators'  
9 fraudulent concealment of their conspiracy, the running of any statute of limitations did not  
10 commence until after 2011, and was tolled with respect to any claims that Plaintiff and members of  
11 the Class have as a result of the anticompetitive conduct alleged in this Complaint.

12 **DAMAGES**

13 99. During the Class Period, plaintiff and the other members of the class purchased  
14 Lithium-ion Rechargeable Batteries directly from defendants, or their subsidiaries, agents, and/or  
15 affiliates, and, by reason of the antitrust violations herein alleged, paid more for such products than  
16 they would have paid in the absence of such antitrust violations. As a result, plaintiff and the other  
17 members of the Class have sustained damages to their business and property in an amount to be  
18 determined at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff demands judgment against defendants as follows:

21 (1) That the Court determine that this action may be maintained as a class action under  
22 Rule 23 (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as class  
23 representative and Plaintiff's counsel be appointed as counsel for the Class;

24 (2) That the unlawful contract, combination or conspiracy alleged be adjudged and  
25 decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the  
26 Sherman Act and Section 4 of the Clayton Act;

(3) That Plaintiff and the Class recover damages, as provided by law, determined to have been sustained as to each of them, in an amount to be trebled in accordance with the antitrust laws, and that judgment be entered against Defendants on behalf of Plaintiff and of the Class;

(4) That Plaintiff and the Class recover their costs of the suit, including attorneys' fees, as provided by law;

(5) That Defendants, their subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf be permanently enjoined and restrained from continuing and maintaining the combination, conspiracy, or agreement alleged herein;

(6) That Plaintiff and members of the Class be awarded pre-judgment and post-judgment interest, and that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action; and

(7) For such other and further relief as is just under the circumstances.

**JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all of the claims asserted in this Complaint that are so triable.

DATED: October 11, 2012



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